

REFERENCE TITLE: identity theft omnibus

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2351

Introduced by
Representative Farnsworth

AN ACT

AMENDING SECTIONS 13-2008, 13-2009 AND 13-2010, ARIZONA REVISED STATUTES;
AMENDING TITLE 13, CHAPTER 38, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING
SECTION 13-3926; AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING
CHAPTERS 32 AND 33; RELATING TO IDENTITY THEFT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-2008, Arizona Revised Statutes, is amended to
3 read:

4 13-2008. Taking identity of another person or entity:
5 classification

6 A. A person commits taking the identity of another person or entity if
7 the person knowingly takes, purchases, manufactures, records, possesses or
8 uses any personal identifying information or entity identifying information
9 of another person or entity, including a real or fictitious person or entity,
10 without the consent of that other person or entity, with the intent to obtain
11 or use the other person's or entity's identity for any unlawful purpose or to
12 cause loss to a person or entity whether or not the person or entity actually
13 suffers any economic loss as a result of the offense.

14 B. On the request of a person or entity, a peace officer in any
15 jurisdiction in which an element of the offense is committed, a result of the
16 offense occurs or the person or entity whose identity is taken resides or is
17 located shall take a report. The peace officer may provide a copy of the
18 report to any other law enforcement agency that is located in a jurisdiction
19 in which a violation of this section occurred.

20 C. If a defendant is alleged to have committed multiple violations of
21 this section within the same county, the prosecutor may file a complaint
22 charging all of the violations and any related charges under other sections
23 that have not been previously filed in any precinct in which a violation is
24 alleged to have occurred. If a defendant is alleged to have committed
25 multiple violations of this section within the state, the prosecutor may file
26 a complaint charging all of the violations and any related charges under
27 other sections that have not been previously filed in any county in which a
28 violation is alleged to have occurred.

29 D. This section does not apply to a violation of section 4-241 by a
30 person who is under twenty-one years of age.

31 E. IF A DEFENDANT IS CONVICTED OF A VIOLATION OF THIS SECTION AND THE
32 COURT SENTENCES THE DEFENDANT TO A TERM OF PROBATION, THE COURT SHALL ORDER
33 THAT AS AN INITIAL CONDITION OF PROBATION THE DEFENDANT BE IMPRISONED IN THE
34 COUNTY JAIL FOR A PERIOD OF NOT LESS THAN SIXTY DAYS. THIS JAIL TERM OF
35 INCARCERATION SHALL NOT BE DEFERRED, DELETED OR OTHERWISE SUSPENDED AND SHALL
36 COMMENCE ON THE DATE OF SENTENCING. THIS SUBSECTION DOES NOT APPLY TO
37 PERSONS WHO ARE SENTENCED TO SERVE A PERIOD OF INCARCERATION IN THE STATE
38 DEPARTMENT OF CORRECTIONS.

39 ~~E.~~ F. Taking the identity of another person or entity is a class 4
40 felony.

41 Sec. 2. Section 13-2009, Arizona Revised Statutes, is amended to read:

42 13-2009. Aggravated taking identity of another person or
43 entity; classification

44 A. A person commits aggravated taking the identity of another person
45 or entity if the person knowingly takes, purchases, manufactures, records,

1 possesses or uses any personal identifying information or entity identifying
2 information of either:

3 1. Five or more other persons or entities, including real or
4 fictitious persons or entities, without the consent of the other persons or
5 entities, with the intent to obtain or use the other persons' or entities'
6 identities for any unlawful purpose or to cause loss to the persons or
7 entities whether or not the persons or entities actually suffer any economic
8 loss.

9 2. Another person or entity, including a real or fictitious person or
10 entity, without the consent of that other person or entity, with the intent
11 to obtain or use the other person's or entity's identity for any unlawful
12 purpose and causes another person or entity to suffer an economic loss of
13 three thousand dollars or more.

14 B. In an action for aggravated taking the identity of another person
15 or entity under subsection A, paragraph 1 of this section, proof of
16 possession out of the regular course of business of the personal identifying
17 information or entity identifying information of five or more other persons
18 or entities may give rise to an inference that the personal identifying
19 information or entity identifying information of the five or more other
20 persons or entities was possessed for an unlawful purpose.

21 C. This section does not apply to a violation of section 4-241 by a
22 person who is under twenty-one years of age.

23 D. IF A DEFENDANT IS CONVICTED OF A VIOLATION OF THIS SECTION AND THE
24 COURT SENTENCES THE DEFENDANT TO A TERM OF PROBATION, THE COURT SHALL ORDER
25 THAT AS AN INITIAL CONDITION OF PROBATION THE DEFENDANT BE IMPRISONED IN THE
26 COUNTY JAIL FOR A PERIOD OF NOT LESS THAN TWO HUNDRED SEVENTY DAYS. THIS
27 JAIL TERM OF INCARCERATION SHALL NOT BE DEFERRED, DELETED OR OTHERWISE
28 SUSPENDED AND SHALL COMMENCE ON THE DATE OF SENTENCING. THIS SUBSECTION DOES
29 NOT APPLY TO PERSONS WHO ARE SENTENCED TO SERVE A PERIOD OF INCARCERATION IN
30 THE STATE DEPARTMENT OF CORRECTIONS.

31 ~~D.~~ E. Aggravated taking the identity of another person or entity is a
32 class 3 felony.

33 Sec. 3. Section 13-2010, Arizona Revised Statutes, is amended to read:

34 13-2010. Trafficking in the identity of another person or
35 entity; classification

36 A. A person commits trafficking in the identity of another person or
37 entity if the person knowingly sells, transfers or transmits any personal
38 identifying information or entity identifying information of another person
39 or entity, including a real or fictitious person or entity, without the
40 consent of the other person or entity for any unlawful purpose or to cause
41 loss to the person or entity whether or not the other person or entity
42 actually suffers any economic loss.

43 B. This section does not apply to a violation of section 4-241 by a
44 person who is under twenty-one years of age.

C. IF A DEFENDANT IS CONVICTED OF A VIOLATION OF THIS SECTION AND THE COURT SENTENCES THE DEFENDANT TO A TERM OF PROBATION, THE COURT SHALL ORDER THAT AS AN INITIAL CONDITION OF PROBATION THE DEFENDANT BE IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT LESS THAN ONE YEAR. THIS JAIL TERM OF INCARCERATION SHALL NOT BE DEFERRED, DELETED OR OTHERWISE SUSPENDED AND SHALL COMMENCE ON THE DATE OF SENTENCING. THIS SUBSECTION DOES NOT APPLY TO PERSONS WHO ARE SENTENCED TO SERVE A PERIOD OF INCARCERATION IN THE STATE DEPARTMENT OF CORRECTIONS.

~~E.~~ D. Trafficking in the identity of another person or entity is a class 2 felony.

Sec. 4. Title 13, chapter 38, article 8, Arizona Revised Statutes, is amended by adding section 13-3926, to read:

13-3926. Search warrants; extraterritorial execution; applicability

A. A PEACE OFFICER OR THE OFFICER'S LAWFUL REPRESENTATIVE MAY EXECUTE A SEARCH WARRANT THAT IS ISSUED PURSUANT TO THIS ARTICLE ON ANY ENTITY THAT CONDUCTS ITS REGULAR BUSINESS IN THIS STATE OR THAT OFFERS ITS SERVICES TO RESIDENTS OF THIS STATE. THIS SECTION APPLIES TO ENTITIES THAT PHYSICALLY EXIST IN A STATE OTHER THAN THIS STATE.

B. SERVICE ON AN EXTRATERRITORIAL ENTITY MAY BE MADE BY FAX OR OTHER ELECTRONIC MEANS IF THE SERVICE IS ACCOMPANIED WITH A CERTIFICATION FROM THE SENDER THAT THE SENDER IS A PEACE OFFICER IN THIS STATE. AN EXTRATERRITORIAL ENTITY MAY REFUSE SERVICE BY THIS MEANS IF THE ENTITY CANNOT VERIFY THAT THE SERVICE WAS MADE BY A PEACE OFFICER IN THIS STATE. IF THE EXTRATERRITORIAL ENTITY REFUSES SERVICE, A PEACE OFFICER WHO IS LOCATED WITHIN THE JURISDICTION IN WHICH THE ENTITY IS LOCATED MAY SERVE THE WARRANT.

C. A SEARCH WARRANT THAT IS ISSUED PURSUANT TO THIS SECTION SHALL BE LIMITED IN SCOPE TO BUSINESS RECORDS, EITHER IN PAPER OR ELECTRONIC FORM, THAT ARE MAINTAINED BY THE EXTRATERRITORIAL ENTITY. THE SEARCH WARRANT SHALL NOT PROVIDE AUTHORITY TO ANY PEACE OFFICER TO SEARCH THE EXTRATERRITORIAL ENTITY'S PLACE OF BUSINESS FOR ANY OTHER TANGIBLE ITEM.

D. AN ENTITY MAY CHALLENGE THE ISSUANCE OF A SEARCH WARRANT THAT WAS ISSUED PURSUANT TO THIS SECTION IN THE JURISDICTION OF THE COURT THAT ISSUED THE SEARCH WARRANT.

Sec. 5. Title 44, Arizona Revised Statutes, is amended by adding chapters 32 and 33, to read:

CHAPTER 32

DISCLOSURE OF COMPROMISED PERSONAL IDENTIFYING INFORMATION AND ENTITY IDENTIFYING INFORMATION

ARTICLE 1. GENERAL PROVISIONS

44-7501. Disclosure; civil penalty; costs; enforcement; applicability; definitions

A. ANY PERSON OR ENTITY THAT CONDUCTS BUSINESS IN THIS STATE AND THAT OWNS OR LICENSES COMPUTERIZED DATA THAT INCLUDES PERSONAL IDENTIFYING INFORMATION OR ENTITY IDENTIFYING INFORMATION SHALL DISCLOSE ANY BREACH OF

1 THE SECURITY OF THE SYSTEM FOLLOWING DISCOVERY OR NOTIFICATION OF THE BREACH
2 IN DATA SECURITY TO EACH RESIDENT OF THIS STATE WHOSE PERSONAL IDENTIFYING
3 INFORMATION OR ENTITY IDENTIFYING INFORMATION WAS OR IS REASONABLY BELIEVED
4 TO HAVE BEEN ACQUIRED OR ACCESSED BY AN UNAUTHORIZED PERSON.

5 B. ANY PERSON OR ENTITY THAT MAINTAINS COMPUTERIZED DATA THAT INCLUDES
6 PERSONAL IDENTIFYING INFORMATION OR ENTITY IDENTIFYING INFORMATION THAT THE
7 PERSON OR ENTITY DOES NOT OWN SHALL NOTIFY THE OWNER OR THE LICENSEE OF THE
8 INFORMATION OF ANY BREACH OF THE SECURITY OF THE DATA IMMEDIATELY FOLLOWING
9 DISCOVERY IF THE INFORMATION WAS OR IS REASONABLY BELIEVED TO HAVE BEEN
10 ACQUIRED OR ACCESSED BY AN UNAUTHORIZED PERSON.

11 C. EACH BREACH SHALL BE REPORTED TO A LOCAL, STATE OR FEDERAL LAW
12 ENFORCEMENT AGENCY AND TO EACH NATIONAL CREDIT REPORTING AGENCY WITHIN
13 FORTY-EIGHT HOURS AFTER THE DISCOVERY OF THE BREACH. THE DISCLOSURE REQUIRED
14 BY SUBSECTION A OF THIS SECTION MAY BE DELAYED IF A LAW ENFORCEMENT AGENCY
15 DETERMINES THAT THE NOTIFICATION WILL IMPEDE A CRIMINAL INVESTIGATION. THE
16 DISCLOSURE SHALL BE MADE UNLESS WITHIN SEVENTY-TWO HOURS AFTER BEING NOTIFIED
17 OF THE BREACH THE LAW ENFORCEMENT AGENCY REQUESTS THAT THE NOTIFICATION NOT
18 BE MADE.

19 D. THE DISCLOSURE REQUIRED BY SUBSECTION A OF THIS SECTION MAY BE
20 PROVIDED BY ONE OF THE FOLLOWING METHODS:

21 1. WRITTEN NOTICE.

22 2. ELECTRONIC NOTICE IF THE PERSON'S OR ENTITY'S PRIMARY METHOD OF
23 COMMUNICATION WITH THE INDIVIDUAL IS BY ELECTRONIC MEANS OR IS CONSISTENT
24 WITH THE PROVISIONS REGARDING ELECTRONIC RECORDS AND SIGNATURES SET FORTH IN
25 THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (P.L. 106-229;
26 114 STAT. 464; 15 UNITED STATES CODE SECTION 7001).

27 3. TELEPHONIC NOTICE.

28 4. SUBSTITUTE NOTICE IF THE PERSON OR ENTITY DEMONSTRATES THAT THE
29 COST OF PROVIDING NOTICE WOULD EXCEED FIFTY THOUSAND DOLLARS OR THAT THE
30 AFFECTED CLASS OF SUBJECT PERSONS TO BE NOTIFIED EXCEEDS ONE HUNDRED
31 THOUSAND, OR THE PERSON OR ENTITY DOES NOT HAVE SUFFICIENT CONTACT
32 INFORMATION. SUBSTITUTE NOTICE SHALL CONSIST OF ALL OF THE FOLLOWING:

33 (a) ELECTRONIC MAIL NOTICE IF THE PERSON OR ENTITY HAS ELECTRONIC MAIL
34 ADDRESSES FOR THE SUBJECT PERSONS.

35 (b) CONSPICUOUS POSTING OF THE NOTICE ON THE WEB SITE OF THE PERSON OR
36 ENTITY IF THE PERSON OR ENTITY MAINTAINS ONE.

37 (c) NOTIFICATION TO MAJOR STATEWIDE MEDIA.

38 E. A PERSON OR ENTITY THAT MAINTAINS THE PERSON'S OR ENTITY'S OWN
39 NOTIFICATION PROCEDURES AS PART OF AN INFORMATION SECURITY POLICY FOR THE
40 TREATMENT OF PERSONAL IDENTIFYING INFORMATION OR ENTITY IDENTIFYING
41 INFORMATION AND IS OTHERWISE CONSISTENT WITH THE TIMING REQUIREMENTS OF THIS
42 SECTION SHALL BE DEEMED TO BE IN COMPLIANCE WITH THE NOTIFICATION
43 REQUIREMENTS OF THIS SECTION IF THE PERSON OR ENTITY NOTIFIES SUBJECT PERSONS
44 IN ACCORDANCE WITH THE PERSON'S OR ENTITY'S POLICIES IF A BREACH OF THE
45 SECURITY SYSTEM OCCURS.

1 F. A WAIVER OF ANY PROVISION OF THIS SECTION IS CONTRARY TO PUBLIC
2 POLICY AND IS VOID AND UNENFORCEABLE.

3 G. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION:

4 1. A PERSON OR ENTITY THAT VIOLATES THIS SECTION IS SUBJECT TO A CIVIL
5 PENALTY OF FIVE HUNDRED DOLLARS PER INDIVIDUAL WHO DID NOT RECEIVE PROPER
6 NOTIFICATION. THE TOTAL CIVIL PENALTY IMPOSED SHALL NOT EXCEED TWO HUNDRED
7 FIFTY THOUSAND DOLLARS FOR ANY ONE BREACH.

8 2. A PERSON OR ENTITY THAT VIOLATES THIS SECTION SHALL REIMBURSE AN
9 INDIVIDUAL WHO DID NOT RECEIVE PROPER NOTIFICATION FOR THE ACTUAL COSTS TO
10 THE INDIVIDUAL AND THE SECONDARY COSTS, INCLUDING COSTS THAT ARE REASONABLY
11 RELATED TO CORRECTING CREDIT ERRORS.

12 3. A PERSON OR ENTITY THAT VIOLATES THIS SECTION SHALL PAY COSTS
13 INCURRED BY THE COUNTY ATTORNEY OR ATTORNEY GENERAL IN ENFORCING THIS
14 SECTION, INCLUDING REASONABLE ATTORNEY FEES.

15 H. THIS SECTION MAY BE ENFORCED BY:

16 1. A COUNTY ATTORNEY IN THE COUNTY IN WHICH THE SECURITY BREACH
17 OCCURS.

18 2. THE ATTORNEY GENERAL IF THE SECURITY BREACH OCCURS IN MULTIPLE
19 COUNTIES OR IF THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE SECURITY BREACH
20 OCCURS CONSENTS TO ENFORCEMENT BY THE ATTORNEY GENERAL.

21 I. THE DISCLOSURE REQUIRED BY SUBSECTION A OF THIS SECTION IS WAIVED
22 IF THE PERSONAL IDENTIFYING INFORMATION OR ENTITY IDENTIFYING INFORMATION IS
23 ENCRYPTED BY USE OF AN ALGORITHMIC PROCESS TO TRANSFORM THE DATA INTO A FORM
24 IN WHICH THE DATA IS RENDERED UNREADABLE OR UNUSABLE WITHOUT USE OF A
25 CONFIDENTIAL PROCESS OR KEY AND THE PERSON OR ENTITY HAS A GOOD FAITH BELIEF
26 THAT THE PROCESS OR KEY HAS NOT BEEN ACQUIRED OR ACCESSED.

27 J. THIS SECTION DOES NOT APPLY TO A PERSON OR ENTITY THAT IS SUBJECT
28 TO AND IN COMPLIANCE WITH FEDERAL LAW SPECIFICALLY ADDRESSING UNAUTHORIZED
29 ACQUISITION OR ACCESS OF COMPUTERIZED DATA THAT COMPROMISES THE SECURITY,
30 CONFIDENTIALITY OR INTEGRITY OF AN INDIVIDUAL'S PERSONAL IDENTIFYING
31 INFORMATION OR ENTITY IDENTIFYING INFORMATION MAINTAINED BY THAT PERSON OR
32 ENTITY.

33 K. FOR THE PURPOSES OF THIS SECTION:

34 1. "BREACH", "BREACH OF THE SECURITY OF THE SYSTEM" OR "SECURITY
35 BREACH" MEANS AN UNAUTHORIZED ACQUISITION OR ACCESS OF COMPUTERIZED DATA THAT
36 COMPROMISES THE SECURITY, CONFIDENTIALITY OR INTEGRITY OF AN INDIVIDUAL'S
37 PERSONAL IDENTIFYING INFORMATION OR ENTITY IDENTIFYING INFORMATION MAINTAINED
38 BY A PERSON OR ENTITY. GOOD FAITH ACQUISITION OR ACCESS OF AN INDIVIDUAL'S
39 PERSONAL IDENTIFYING INFORMATION OR ENTITY IDENTIFYING INFORMATION BY AN
40 EMPLOYEE OR AGENT OF THE PERSON OR ENTITY FOR THE PURPOSES OF THE PERSON OR
41 ENTITY IS NOT A BREACH OF THE SECURITY SYSTEM IF THE INFORMATION IS NOT USED
42 OR SUBJECT TO FURTHER UNAUTHORIZED DISCLOSURE.

43 2. "ENTITY IDENTIFYING INFORMATION" HAS THE SAME MEANING PRESCRIBED IN
44 SECTION 13-2001.

1 2. USED DUE DILIGENCE TO PROPERLY DISCARD OR DISPOSE OF THE RECORD.

2 D. THIS SECTION MAY BE ENFORCED BY EITHER OF THE FOLLOWING:

3 1. A COUNTY ATTORNEY IN THE COUNTY IN WHICH THE CUSTOMER'S RECORD WAS
4 WRONGFULLY DISCARDED OR DISPOSED.

5 2. THE ATTORNEY GENERAL IF THE WRONGFUL DISCARD OR DISPOSAL OCCURS IN
6 MULTIPLE COUNTIES OR IF THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE RECORD
7 WAS WRONGFULLY DISCARDED OR DISPOSED CONSENTS TO ENFORCEMENT BY THE ATTORNEY
8 GENERAL.

9 E. FOR THE PURPOSES OF THIS SECTION:

10 1. "ENTITY IDENTIFYING INFORMATION" HAS THE SAME MEANING PRESCRIBED IN
11 SECTION 13-2001.

12 2. "PERSONAL IDENTIFYING INFORMATION" HAS THE SAME MEANING PRESCRIBED
13 IN SECTION 13-2001.